

EXHIBIT A

FILED
05-15-2019
Clerk of Circuit Court
Manitowoc County, WI
2019CV000214

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

KENNETH H. KATZ
9801 Lakeshore Road
Newton, WI 53063

Plaintiff,

Case No.
Case Code: 30301

FOREFRONT DERMATOLOGY, S.C.,
f/k/a **DERMATOLOGY ASSOCIATES**
OF WISCONSIN, S.C.
Successors and Assigns
c/o CT Corporation System, Registered Agent
301 S. Bedford Street, Suite 1
Madison, WI 53703

Involuntary Plaintiff,

-vs-

UNITED OF OMAHA LIFE INSURANCE
COMPANY,
Successors and Assigns
c/o The Prentice Hall Corporation System, Inc.,
registered agent
8040 Excelsior Drive, Suite 400
Madison, WI 53717

and

ABC INSURANCE COMPANY,

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court whose address is 1010 South Eighth Street, Manitowoc, Wisconsin 54220, and to SALUTZ & SALUTZ LLP, plaintiffs attorneys, whose address is Post Office Box 187, 823 Marshall Street, Manitowoc, Wisconsin 54221-0187. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 15th day of May, 2019.

SALUTZ & SALUTZ LLP
Attorneys for Plaintiff, Kenneth H. Katz



Kevin P. Stangel

State Bar No. 1032981

Salutz & Salutz LLP
Attorneys at Law
P.O. Box 187
823 Marshall Street
Manitowoc, WI 54221-0187
Phone: (920) 682-4644

FILED
05-15-2019
Clerk of Circuit Court
Manitowoc County, WI
2019CV000214

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

KENNETH H. KATZ
9801 Lakeshore Road
Newton, WI 53063,

Plaintiff,

Case No.
Case Code: 30301

FOREFRONT DERMATOLOGY, S.C.,
f/k/a DERMATOLOGY ASSOCIATES
OF WISCONSIN, S.C.
Successors and Assigns
c/o CT Corporation System, Registered Agent
301 S. Bedford Street, Suite 1
Madison, WI 53703

Involuntary Plaintiff,

-vs-

UNITED OF OMAHA LIFE INSURANCE
COMPANY,
Successors and Assigns
c/o The Prentice Hall Corporation System, Inc.,
registered agent
8040 Excelsior Drive, Suite 400
Madison, WI 53717

and

ABC INSURANCE COMPANY,

Defendants.

COMPLAINT

NOW COMES the plaintiff, Kenneth H. Katz, by his attorneys, Salutz & Salutz
LLP, by Attorney Kevin P. Stangel, and as and for a complaint against the defendants
named herein, alleges and shows to the court as follows:

I. GENERAL ALLEGATIONS

1. The plaintiff, Kenneth H. Katz (hereinafter "Katz"), and at all times material hereto was an adult resident of the State of Wisconsin, residing at 9801 Lakeshore Road, Newton, Wisconsin 53063. Katz is a physician and surgeon by profession and at all times pertinent hereto was employed by involuntary plaintiff, Dermatology Associates of Wisconsin, S.C., now known as Forefront Dermatology, S.C. (hereinafter "Dermatology Associates").

2. Involuntary Plaintiff, Dermatology Associates of Wisconsin, S.C. is a corporation organized under the laws of the State of Wisconsin to do business in the State of Wisconsin and elsewhere as a provider of dermatology and related medical services. Dermatology Associates has a principal place of business located at 801 York Street, Manitowoc, Wisconsin 54220. Dermatology Associates employed Katz at times relevant to this complaint. Dermatology Associates is joined in this action as a necessary party pursuant to Sec. 803.03, Wisconsin Statutes. CT Corporation System, 301 S. Bedford Street, Suite 1, Madison, WI 53703 is the registered agent for service of process upon Dermatology Associates.

3. Defendant, United of Omaha Life Insurance Company (hereinafter "United of Omaha"), is an insurance corporation with a principal place of business located at 3300 Mutual of Omaha Plaza, Omaha, Nebraska 68175. United of Omaha was licensed and authorized to issue policies of disability insurance in the State of Wisconsin and did issue a policy of disability insurance, effective December 1, 2012, to Dermatology Associates as policy holder for the benefit of Katz its employee and other eligible physicians. A true and correct copy of said disability insurance policy

(hereinafter "the Policy"), with group policy number GLTD-AMS4, group number G000AMS4, is attached as Exhibit A to this complaint and all terms thereof are incorporated by reference herein. United of Omaha is joined as a party defendant in this action pursuant to Sec. 803.03, Wisconsin Statutes.

4. Defendant, ABC Insurance Company (hereinafter "ABC"), is named upon information and belief as a reinsurer for United of Omaha and is designated by such fictitious name until its true identity can be determined, at which time Katz will amend this complaint accordingly. At all times material hereto, ABC provided a policy or policies of insurance to United of Omaha to protect United of Omaha against damages United of Omaha might become legally liable to pay as a result of any acts and/or omissions of the type hereinafter alleged. Thus, ABC is a proper party to this action pursuant to Wis. Stat. §803.04(2) and is liable to Katz for his damages.

5. At times pertinent to this complaint, Dermatology Associates made timely premium payments to United of Omaha for disability insurance coverage under the Policy for Katz and other eligible physician employees.

6. Katz made a claim for disability benefits under the Policy. The claim for disability was documented with a Proof of Disability satisfying the definitions of the Policy for "Disability and Disabled". On November 5, 2018, United of Omaha issued a written determination approving Katz' claim for long term disability payments under the Policy and establishing a date of disability of August 16, 2016.

7. On January 23, 2019, in response to United of Omaha's request, Katz provided further documentation consisting of W2 wage statements, payroll records and a CPA analysis satisfying the requirement of the Policy for proof of "Basic Monthly

Earnings". Said documentation established Katz was entitled to receive a monthly disability payment of \$15,000.00 per month, calculated effective August 16, 2016, with payments to begin February 13, 2017 after satisfying the Policy's Elimination Period.

8. On February 21, 2019, United of Omaha issued a confusing and contradictory determination alleging Katz was entitled to "a gross monthly (disability) benefit of \$5,271.39 before offsets for other income" earned since the date of disability (August 16, 2016). Although United of Omaha had been provided with both Katz' W2 statements and Dermatology Associates' payroll records for the period after the date of disability, United of Omaha failed to define the "offsets". As of the date of disability, August 16, 2016, and thereafter, Katz was "prevented from performing at least one of the Material Duties of Your (his) Regular Occupation", namely performing surgeries. United of Omaha does not dispute this. Yet, United of Omaha reversed its November 5, 2018 finding of disability and stated Katz' disability claim "would be denied".

9. The provisions and definitions of the Policy upon which United of Omaha relies to limit and/or deny Katz' disability claim are ambiguous and should be construed against United of Omaha as the insurer and drafter of the Policy to give effect to Katz' reasonable expectation of disability insurance coverage.

10. Katz has made a demand for United of Omaha to perform under the terms of the Policy. As a result of United of Omaha's failure of performance, Katz brings this action for money damages, including prejudgment interest, expenses of litigation, and reasonable attorney fees.

11. *The Manitowoc County Circuit Court has jurisdiction over all parties and matters in this action and venue properly rests in Manitowoc County, Wisconsin.*

**II. FIRST CAUSE OF ACTION AGAINST DEFENDANTS:
BREACH OF CONTACT**

12. Katz realleges all of the allegations of paragraphs 1 through 11 of this complaint as if fully set forth herein.

13. On December 1, 2012, Defendant, United of Omaha, entered into a contract with Involuntary Plaintiff, Dermatology Associates, to provide disability insurance coverage for physician employees of Dermatology Associates. At all times material hereto, Katz was a physician employee of Dermatology Associates eligible for disability insurance coverage.

14. At all times material hereto, Dermatology Associates timely paid to United of Omaha the premium payments due under the insurance contract referred to in paragraph 13 above and the premium amounts paid were based upon a salary received by Katz in excess of the maximum monthly disability benefit payable under said insurance contract.

15. Katz filed an application for disability benefits under the insurance contract referred to in paragraphs 13 and 14 of this Complaint and referred to elsewhere in this Complaint as "the Policy".

16. Defendant, United of Omaha, initially approved Katz' claim for disability benefits on November 5, 2018, then relying on its interpretation of provisions of the insurance contract ("the Policy") that are ambiguous, denied Katz' disability claim on May 2, 2019.

17. United of Omaha's denial of coverage violates its duty to perform under the terms of the insurance contract ("the Policy") and breaches the contract with Dermatology Associates for which Katz is an intended beneficiary. United of Omaha's

actions violate the reasonable expectations of both Dermatology Associates and Katz as to disability coverage under the Policy.

18. As a result of the breach of contract by Defendant, United of Omaha, Katz has been damaged in an amount to be determined at trial and is entitled to recover his damages, including prejudgment interest, expenses of litigation, and reasonable attorney fees.

**III. SECOND CAUSE OF ACTION AGAINST DEFENDANT:
FAILURE TO MAKE PAYMENT OF CLAIMS**

19. Katz realleges all of the allegations of paragraphs 1 through 18 of this complaint as if fully set forth herein.

20. Defendant, United of Omaha, failed to make disability payments for Katz' disability claim after receipt of a written claim for disability benefits with a proof of loss. Pursuant to Sec. 628.46, Wisconsin Statutes, an insurer shall promptly pay every insurance claim. A claim is overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of the loss.

21. As a result of United of Omaha's failure to make payment to Katz of disability benefits due and demanded pursuant to the Policy of United of Omaha, payment of Katz' claim is now overdue pursuant to Sec. 628.46 (1), Wisconsin Statutes.


22. Because United of Omaha has not paid Katz' disability claim and the payment is overdue, interest is due on the overdue payment at the rate of 7.5% per year.

WHEREFORE, plaintiff demands judgment against the defendants, individually and collectively, as follows:

- A. For consequential damages including, but not limited to, the full amount of disability benefits owed under United of Omaha's disability insurance policy with Dermatology Associates, dated December 1, 2012.
- B. For prejudgment interest due based upon United of Omaha's failure to make timely payment of Katz' disability claim.
- C. For statutory litigation costs, reasonable attorney fees, and disbursements required to prosecute this action.
- D. For such other and further relief as this Court deems just and proper.

Dated this 15th day of May, 2019.

SALUTZ & SALUTZ LLP
Attorneys for Plaintiff, Kenneth H. Katz



Kevin P. Stahgel
State Bar No. 1032961

Salutz & Salutz LLP
Attorneys at Law
P.O. Box 167
823 Marshall Street
Manitowoc, WI 54221-0167
Phone: (920) 682-4844

EXHIBIT B

KENNETH H. KATZ
9801 Lakeshore Road
Newton, WI 53063,

Case No: 2019CV000214

Case Code: 30301

Plaintiff,

FOREFRONT DERMATOLOGY, S.C.,
f/k/a DERMATOLOGY ASSOCIATES OF
WISCONSIN, S.C.
Successors and Assigns
c/o CT Corporation System, Registered Agent
301 S. Bedford Street, Suite 1
Madison, WI 53703,

Involuntary Plaintiff,

vs.

UNITED OF OMAHA LIFE INSURANCE
COMPANY,
Successors and Assigns
c/o The Prentice Hall Corporation System, Inc.,
registered agent
8040 Excelsior Drive, Suite 400
Madison, WI 53717,

and

ABC INSURANCE COMPANY,

Defendants.

NOTICE OF FILING NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant United of Omaha Life Insurance Company
("United of Omaha") has filed a Notice of Removal of this action to the United States District

Court for the Eastern District of Wisconsin. A true and correct copy of the Notice of Removal is attached to this Notice.

You are advised that United of Omaha, upon filing such Notice of Removal with the office of the Clerk of the United States District Court for the Eastern District of Wisconsin, also filed a copy with the Clerk of the State of Wisconsin Circuit Court in Manitowoc County to effect removal pursuant to 28 U.S.C. § 1446(d).

NILAN JOHNSON LEWIS PA

Date: June 12, 2019

By s/ William D. Hittler
William D. Hittler (WI Bar No. 1029038)
120 South Sixth Street, Suite 400
Minneapolis, MN 55402-4501
Phone: 612-305-7500
Fax: 612-305-7501
whittler@nilanjohnson.com

**ATTORNEYS FOR DEFENDANT UNITED OF
OMAHA LIFE INSURANCE COMPANY**